REMARKS

This amendment is submitted in response to the Official Action mailed March 31, 2008. In view of the above claim amendments and the following remarks, reconsideration by the Examiner and allowance of this application is respectfully requested.

Claims 10-18, 25, 26, 38, 45, and 51 are pending. Claim 10 has been amended to more particularly point out and distinctly claim the subject matter Applicant regards as the invention. In particular, Claim 10 has been amended to define the anti-microbial fatty acid component as comprising an amount of lauric acid effective to provide the feed composition with a lauric acid concentration between 0.5 and 10%. This is disclosed in the specification at page 4, lines 25 – 28 and does not introduce new matter.

Claims 11 and 38 have been amended to conform to ths change to Claim 10, which also does not introduce new matter. Claim 11 has also been amended to replace "high lauric acid soy oil" with "high lauric acid canola oil." Laurical®, a genetically modified high lauric acid canola oil, is disclosed in the specification at page 3, lines 25 – 27, and supplies descriptive support for this claim amendment.

Finally, Claim 13 has been amended to replace "essentially free of antibiotic supplements" with "comprises less than 30% of an optimal antibiotic supplement." "Optimal antibiotic supplement" is defined at page 5, lines 1 – 4, of the specification, with the use of less than 30% of the supplement disclosed at page 5, lines 19 – 22. The amendment to Claim 13 therefore also does not introduce new matter.

For reasons which are submitted below, the claims are believed to be in condition for allowance. The amendments are believed to resolve the concerns raised by the Examiner. Accordingly, reconsideration is respectfully requested.

Turning to the Official Action, the rejection against claim 13 is maintained under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claims the subject matter which the applicant regards as the invention. Specifically, the action states that the metes and bounds of the phrase "essentially free of antibiotic supple-

ments" are not clear. (July 2, 2007 Office Action, page 6). This rejection is respectfully traversed in view of the above claim amendments for the reasons set forth hereinafter.

In light of this rejection, newly amended claim 13 now defines the amount of the remaining portion of the antibiotic supplement as less than 30% of an optimal antibiotic supplement. Therefore, this rejection is respectfully traversed.

The rejection of claims 10-13, 18, 38, and 45 is maintained under 35 U.S.C. §102(b) as being anticipated by Schroeder et al., U.S. 4,169,041. Schroeder et al. is cited as teaching an animal feed supplement comprising crude protein, an antibiotic, and high lauric acid natural oil. The disclosure of coconut oil and palm oil at column 5 lines 50-54 and lines 60-62 of Schroeder et al. is cited by the Office Action as teaching the high lauric acid natural oil component. This rejection is respectfully traversed in light of the amendments made above, and for the reasons set forth hereinafter.

The MPEP states that when a compound is not specifically named, but instead it is necessary to select portions of teachings within a reference and combine them, e.g., select various items from a list of alternatives given, anticipation can only be found if the classes of items are sufficiently limited or well delineated. (MPEP §2131.02). In Petering, the prior art disclosed a generic chemical formula "wherein X, Y, Z, P, and R' represent either hydrogen or alkyl radicals, or a side chain containing an OH group." (In re Petering, 301 F.2d 676). The court held that this formula, without more, could not anticipate a claim to a specific compound because the generic formula encompassed a vast number of possible compounds. (Id).

In this case, Schroeder et al. discloses a number of possible ingredients for inclusion in an animal feed supplement, yet does not literally identify what is claimed in the instant application. In Schroeder et al., possible ingredients for its disclosed animal feed include a sugar source, a phosphate source, a metal oxide, an emulsifier, preservatives, a fat source, and an antibiotic supplement. Schroeder et al. then continues to list potential specific items for each possible generic ingredient, i.e., possible fat sources include yellow grease, palm oil, and/or mixed vegetable oils. By listing a number of potential specific items for each generic ingredient, Schroeder et al. provides a vast number of specific animal feed compositions that could be created from its generic list of ingredients. Although Schroeder discloses a few

specific animal feed compositions, it fails to specifically disclose the animal feed composition claimed in the instant application.

To further strengthen this argument, Claim 10 is amended to include the limitations of Claim 12, so that Claim 10 reads follows – "In an animal feed composition comprising crude protein and an antibiotic supplement, the improvement comprising replacing all or a portion of said antibiotic supplement with an anti-bacterial amount of an anti-bacterial fatty acid component, comprising an amount of lauric acid effective to provide said feed composition with a lauric acid concentration between 0.5 to 10%." Moreover, Claim 12 is cancelled and Claims 11 and 38 are amended to make them consistent with amended Claim 10.

Accordingly, because Schroeder et al. disclose a generic list of ingredients, creating a vast number of possible specific animal feed compositions, yet fail to specifically disclose the animal feed composition claimed in the instant application, Schroeder et al. do not anticipate the instant application, and the rejection of claims 10 – 13, 18, 38 and 45 under 35 U.S.C. §102(b) as being anticipated by Schroeder et al. is respectfully traversed.

Next, the rejection of claims 10- 14, 15 - 18, 25, 26, 38, 45 and 51 is maintained under 35 U.S.C. §103(a) as being unpatentable over Schroeder et al. in view of 21 C.F.R. §558.15 and Raloff, Science News, 154, 39 (July 18, 1998). 21 C.F.R. §558 is cited as teaching approved allowable animal feed antibiotics and their maximum amounts and optimal use levels in animal feeds. (See July 2, 2007 Office Action, page 12). Raloff is cited as teaching "that 'cases of antibiotic resistant human disease have clearly occurred due to bacteria from live-stock treated with drugs' and teaches 'propitious use of subtherapeutic antibiotics and if there are alternatives, consider using them." (Id). This rejection is respectfully traversed for the reasons set forth hereinafter.

Initially, Applicants reiterate that Raloff is not prior art against the present application. The present application claims priority to U.S. Provsional Application Serial No. 60/090,303, which was filed on June 23, 1998. Raloff is dated July 18, 1998. Specifically, the instantly claimed animal feed composition as claimed in claims 10 – 18, 25, 26, 38, 45, and 51 is disclosed in 60/090,303 on page 3, lines 1- 4, and page 8, lines 1- 19. Regardless, the disclosure of Raloff does not remedy the defects of Schroeder et al., which discloses a generic list of

ingredients, creating a vast number of possible specific animal feed compositions, yet fails to specifically disclose the animal feed composition claimed in the instant application containing an amount of lauric acid that is effective to provide the feed composition with a lauric acid concentration between 0.5 and 10%, or the antimicrobial advantages obtained therefrom when fed to livestock.

21 C.F.R. §558 also does not remedy the defects of Schroeder et al. Therefore the rejection of claims 10– 14, 15– 18, 25, 26, 38, 45, and 51 in view of Schroeder et al. and further in view of 21 C.F.R. §§558.4, 558.15, 558.78, 558.128, and 558.355, and Raloff is respectfully traversed.

Next, Claim 11 is newly rejected under 35 U.S.C. §112, first paragraph as failing to comply with the enablement requirement. Specifically the Action states, "the scope of Claim 11 is the use of high lauric acid soy oil in an animal feed composition," and that the specification discloses that soybean oil from plants genetically modified for high lauric acid content can be used. The Action notes that soy oil otherwise has no detectable amounts of lauric acid and states that at the time of filing of the instant specification, it was not known how to make soy oil having a high lauric acid content, meaning that undue experimentation would be required to make and use the animal feed composition in claim 11. This rejection is respectfully traversed in view of the above claim amendment for the reasons set forth hereinafter.

Claim 11 has been amended to replace "high lauric acid soy oil" with "high lauric acid canola oil." A USDA approved genetically modified high lauric acid canola oil manufactured by Calgene was well-known and commercially available under the trade name Laurical® at the time the present application was filed and is disclosed at page 3 of the present specification. Accordingly, because a canola oil – based product was commercially available, by amending Claim 11 to replace "soy oil" with "canola oil," the rejection of Claim 11 under 35 U.S.C. §112, first paragraph is respectfully traversed.

Next Claims 10 and 11 are newly rejected under 35 U.S.C. §103(a) as being unpatentable over Schroeder et al. in view of Williams et al., U.S. 5,378,477. Williams et al. is cited

as teaching palm kernel oil in an animal feed composition that results in a desirable increase in daily frequency and total daily feed composition. The Action states that combining these two references would render it obvious to substitute the coconut oil of Schroeder et al. with the palm kernel oil of Williams et al. (March 31, 2008 Office Action, pages 6-7). This rejection is respectfully traversed for the reasons set forth hereinafter.

The disclosure of Williams et al. does not remedy the defects of Schroeder et al., which discloses a generic list of ingredients, creating a vast number of possible specific animal feed compositions, yet fails to specifically disclose the animal feed composition claimed in the instant application containing an amount of lauric acid effective to provide the feed composition with a lauric acid concentration between 0.5 and 10%, nor the advantages obtained therefrom, namely antimicrobial properties that are beneficial when fed to livestock. Therefore the rejection of claims 10 and 11 over Schroeder et al. in view of Williams et al. is respectfully traversed.

Finally, Claim 11 is newly rejected under 35 U.S.C. §103(a) as being unpatentable over Schroeder et al. and Williams et al. as applied to Claims 10 and 11 in view of the publication "Biotechnology Consultation Memorandum of Video-Conference BNF No. 000025" (http://www.cfscan.fda.gov). Specifically, the Action states that combining these references would render it obvious to substitute palm kernel oil with rapeseed oil. This rejection is also respectfully traversed for the following reasons.

As discussed above, the Williams et al. reference and the Biotechnology Consultation Memorandum do not remedy the defects of Schroeder et al. The rejection of Claim 11 over Schroeder et al. and Williams et al. as applied to Claims 10 and 11 in view of the publication "Biotechnology Consultation Memorandum of Video-Conference BNF No. 000025" is therefore respectfully traversed.

In view of the above claim amendments and the foregoing remarks, this application is believed to be in condition for allowance. Reconsideration is respectfully requested. However, the Examiner is requested to telephone the undersigned if there are any remaining issues in this application to be resolved.

Finally, if there are any additional charges in connection with this response, the Examiner is authorized to charge Applicant's deposit account number 50-1943 therefor.

Respectfully submitted,

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